

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re: Fifth Third Early Access Cash ) CASE NO. 1:12-cv-00851-MRB  
Advance Litigation )  
 ) DISTRICT JUDGE MICHAEL R. BARRETT  
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 ) **PLAINTIFFS' CONSENT MOTION TO**  
 ) **CONSOLIDATE CASES**  
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Plaintiffs William R. Klopfenstein, Adam McKinney, Donald E. Adanich, Lyn A. Adanich and D. Scott Little ("Plaintiffs"), through undersigned counsel, file this Consent Motion to Consolidate Cases, and request entry of an order consolidating the *Klopfenstein*, *Laskaris*, *McQuillen*, *Harrison* and *Fyock* cases, all of which are pending before Your Honor. This Motion is supported by Plaintiffs in all of the related cases and is consented to by Defendant.

**I. INTRODUCTION**

The *Klopfenstein* Plaintiffs filed the initial Complaint in this case on August 3, 2012. [D.E. #1] Several months later, additional actions were filed in various courts: *Laskaris v. Fifth Third Bank*, No. 13-cv-20529 (S.D. Fla.); *McQuillen v. Fifth Third Bank*, No. 3:13-cv-00476 (W.D. Ky.); *Harrison v. Fifth Third Bank*, No. 1:13-cv-00046 (M.D. TN); and *Fyock v. Fifth Third Bank*, No. 3:13-cv-00438 (S.D. Ill.). These additional actions were transferred to the Southern District of Ohio, and have been assigned to this Court as related cases. *See Laskaris*,

No. 1:13-cv-00327-MRB; *McQuillen*, No. 1:13-cv-00453-MRB; *Harrison*, No. 1:13-cv-00497-MRB; *Fyock*, 1:13-cv-00563-MRB. Plaintiffs seek consolidation of these cases under Federal Rule of Civil Procedure 42(a)(2), which will promote the efficient prosecution of the litigation.

## II. ARGUMENT

Federal Rule of Civil Procedure 42(a)(2) grants the district court the discretion to consolidate separately captioned lawsuits into one case where the actions involve a common question of law or fact and where the proposed consolidation would promote convenience and judicial economy. “Courts have broad discretion to consolidate similar actions pending before it.” *Rice v. Javitch Block & Rathbone, LLP*, No. 2:04-CV-00951, 2012 WL 506833, at \*3 (S.D. Ohio Feb. 15, 2012) (citing *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir.1993); *Mitchell v. Dutton*, 865 F.2d 1268 (6th Cir.1989)). In deciding motions to consolidate related cases, Courts must consider:

[W]hether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

*Cantrell*, 999 F.2d at 1011 (6th Cir.1993). Each of these considerations favor consolidation here.

The *Klopfenstein*, *Laskaris*, *McQuillen*, *Harrison* and *Fyock* cases filed against Fifth Third Bank are nearly identical putative consumer class actions, brought on behalf of similarly situated individuals, arising out of the same course of allegedly unlawful conduct engaged in by Fifth Third Bank. Because of the similar questions of fact and law arising from all Plaintiffs’ claims, the five cases are suitable for disposition in the same proceeding, which will eliminate the risk of inconsistent adjudications, promote judicial efficiency and reduce overall expenses. Therefore, Plaintiffs respectfully request that the Court grant this Motion.

Additionally, Plaintiffs respectfully request that the Court enter an Order allowing the filing of a consolidated Complaint on or before October 4, 2013, and allowing Fifth Third until November 22, 2013 to respond to the consolidated Complaint. Because of the similarity of the legal and factual issues presented by the various cases, a single, consolidated Complaint would serve as an efficient vehicle for the prosecution of this litigation, not just for Fifth Third Bank but also the Court.

On July 23, this Court entered an Order designating the undersigned as Interim Co-Lead Class Counsel and ordering that “Plaintiffs’ Interim Class Counsel shall be the spokesperson for all Plaintiffs’ counsel and shall be the ones to communicate with Defendant’s counsel and the Court.” Counsel for all Plaintiffs in each of these cases support this Motion and counsel for Fifth Third Bank have indicated that they consent to this Motion.

### III. CONCLUSION

WHEREFORE, Plaintiffs respectfully requests that this Court consolidate the *Klopfenstein*, *Laskaris*, *McQuillen*, *Harrison* and *Fyock* cases under Fed. R. Civ. P. 42(a), order the filing of a single consolidated complaint, set a scheduling order for filing and responding to the consolidated complaint and afford any other relief that this Court deems just and appropriate.

Dated: 08/30/2013

Respectfully submitted,

s/ Stuart E. Scott

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30th day of August 2013, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF System. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF Systems.

s/ Stuart E. Scott

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